

State of Hawai'i  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, Hawai'i 96813

December 8, 2006

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawai'i  
Honolulu, Hawai'i

Board members:

SUBJECT: REQUEST FOR APPROVAL OF A MEMORANDUM OF  
AGREEMENT BETWEEN THE STATE OF HAWAII DEPARTMENT  
OF LAND AND NATURAL RESOURCES AND THE UNITED  
STATES FISH AND WILDLIFE SERVICE

SUMMARY:

This Board Submittal requests approval of a Memorandum of Agreement between the Department of Land and Natural Resources (DLNR) and the United States Fish and Wildlife Service (USFWS) to allow the USFWS the use of the DLNR owned amphibious excavator together with its various mechanical attachments and to stipulate the conditions under which the DLNR allows the USFWS the use of said equipment.

BACKGROUND:

The Board through the Department of Land and Natural Resources is charged with the management of wildlife resources in the State of Hawaii. The Department of Land and Natural Resources is the duly authorized agency within the State of Hawaii with the statutory (HRS Title 12, chapters and sections therein) and constitutional (Article XI) responsibility for the management and conservation of wildlife in the State of Hawaii. The actions by the Department are authorized under HRS Chapter 183D, Wildlife, Section 183D-2, Powers and Duties of Department, Section 183D-61, Conservation of Aquatic Life, Wildlife, and Land Plants, Section 195D-1, General Provisions, and Section 195D-5, Conservation Programs.

The USFWS has plans to restore wetlands within the James Campbell National Wildlife Refuge and the Pearl Harbor National Wildlife Refuge. As a partner in the Oahu Wetlands Restoration and Protection Partnership the DLNR is seeking approval to allow the USFWS use of their amphibious excavator and its various mechanical attachments for this purpose.

As participants in the Oahu Wetland Restoration and Protection Partnership, which improves and

broadens recovery efforts for threatened and endangered waterbird species as well as increases habitat for migratory shorebirds and native fisheries, it is in the interest of both parties that residents and visitors of Oahu can view, learn about, and help protect Oahu's native resources. It is also in the interest of both parties to remove mangroves at selected sites along the coastline of Oahu to help restore wetland habitat used by endangered waterbird species and/or native fish.

#### DISCUSSION:

The goals of allowing the USFWS the use of the DLNR owned amphibious excavator and its various mechanical attachments under this MOA include: (a) improving and broadening recovery efforts for threatened and endangered Hawaiian waterbird species; (b) increasing habitat for migratory shorebirds; (c) increasing habitat for native fisheries of Hawaii along the shorelines of Oahu.

Use of the excavator will be conducted in accordance with the laws and rules of the State of Hawaii, ordinances of the appropriate Counties of the State of Hawaii and with Federal laws and regulations; and will be consistent with sound management practices and with due regard for the protection of the public, threatened and endangered species, native resources and watersheds, domestic animals, and the environment.

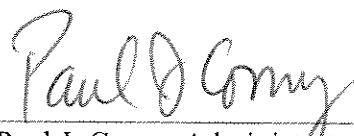
Signature of this Memorandum of Agreement constitutes a financial obligation on the part of the USFWS. The USFWS will be responsible for all expenses to operate and repair the excavator including, but not limited to, expenses for transportation, daily maintenance, operator wages, fuel, lubrication, and hydraulic fluids for purpose of this Memorandum of Agreement.

The Memorandum of Agreement may be amended at any time by mutual agreement of the parties in writing. It also may be terminated by either party upon sixty (60) days written notice to the other party prior to the date of termination.

#### RECOMMENDATION:

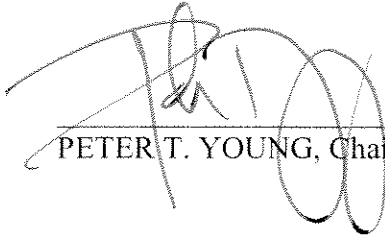
That the Board authorize the Chairperson to execute a Memorandum of Agreement with the USFWS subject to approval as to form of the Memorandum of Agreement by the Attorney General's office.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Paul J. Conry", is written over a horizontal line.

Paul J. Conry, Administrator  
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:

A handwritten signature in black ink, appearing to read 'P. T. Young', is written over a horizontal line.

PETER T. YOUNG, Chairperson

MEMORANDUM OF AGREEMENT BETWEEN THE STATE OF HAWAII DEPARTMENT  
OF LAND AND NATURAL RESOURCES AND THE UNITED STATES FISH AND  
WILDLIFE SERVICE

This MEMORANDUM OF AGREEMENT (hereinafter referred to as "MOA"), made and entered on the \_\_\_\_\_ day of \_\_\_\_\_, 2006, by and between the DEPARTMENT OF LAND AND NATURAL RESOURCES, State of Hawaii, (hereinafter referred to as DLNR), whose address and place of business is 1151 Punchbowl Street, Honolulu, Hawaii 96813, and the UNITED STATES FISH AND WILDLIFE SERVICE (hereinafter referred to as USFWS), whose address and place of business is 300 Ala Moana Blvd. RM #3-122, Honolulu, Hawaii 96850.

WHEREAS, the purpose of this MOA is to allow the USFWS the use of the DLNR-owned amphibious excavator (hereinafter referred to as "Excavator") together with its various mechanical attachments and to stipulate the conditions under which the DLNR allows the USFWS the use of said equipment; and,

WHEREAS, the USFWS is a participant in the Oahu Wetlands Restoration and Protection Partnership; and,

WHEREAS, the Oahu Wetland Restoration and Protection Partnership improves and broadens recovery efforts for threatened and endangered water bird species as well as increases habitat for migratory shorebirds and native fisheries of Hawaii along the shorelines of Oahu; and,

WHEREAS, the USFWS operates and manages the Oahu National Wildlife Refuge Complex for the protection and conservation of wildlife and plants listed as endangered or threatened species and that management provides habitat for Hawaii's four endangered water birds (Hawaiian Stilt, Hawaiian Coot, Hawaiian Moorhen and Hawaiian Duck) and other native wildlife, migratory waterfowl and shorebirds; and,

WHEREAS, the USFWS plans to restore wetlands within the James Campbell National Wildlife Refuge and the Pearl Harbor National Wildlife Refuge; and,

WHEREAS, it is in the interest of both parties that residents and visitors of Oahu can view, learn about, and help protect Oahu's native resources; and,

WHEREAS, it is in the interest of both parties to remove mangrove at selected sites along the coastline of Oahu to help restore wetland habitat used by endangered water bird species and/or native fishes.

NOW, THEREFORE, in consideration of the premises stated above, the parties deem it mutually advantageous and desirable to cooperate and hereby agree as follows:

1. This Agreement shall be effective on the Effective date, and shall continue for a term of two years from the Effective Date or as extended by the DLNR in writing. The USFWS will be allowed use of the Excavator only upon execution of this Agreement by both parties and upon receipt of a written Notice to Proceed issued by the DLNR to the USFWS.
2. Transportation and Operation
  - a. The USFWS shall have overall project responsibility and will acquire all permits and documents necessary to initiate, execute, and complete the USFWS's project(s); provide for the project expenses for the operation of the machine, removal of the mangrove,

transportation and disposal of plant waste; take reasonable measure and precautions to guard the machine and its associated parts against vandalism and theft; minimize the transportation of undesirable seeds, viable roots, and other plant parts to other locations without similar species by pressure washing the tracks and implements at the end of each project prior to transporting to the next location; provide transportation of the Excavator which includes but is not limited to route planning and obtaining trailer services, permits, police escorts, and other activities necessary to safely transport the Excavator; acquire the necessary Federal, State and City permits for the use of the Excavator; and provide for operation and maintenance of the Excavator, including diesel fuel, oil lubrication, and hydraulic fluids.

- b. For security purposes, the USFWS shall not store the Excavator at any location where work is not being actively pursued. Should the USFWS transport the Excavator to a location and work at that location is completed, suspended, delayed, or otherwise not actively pursued, the USFWS shall immediately notify the DLNR by facsimile and transport the Excavator to K & M Service Yard within five (5) days.
- c. The USFWS shall employ a certified heavy equipment operator trained in the operation of a 2001 Caterpillar Model 320L Long Reach Amphibious Excavator with a Pontoon Style Amphibious Undercarriage as Manufactured by Quality Industries to capably and safely operate the Excavator. To ensure that the Excavator is being appropriately operated, the DLNR may observe and monitor the working performance of the USFWS's operator. Should the DLNR determine, at any time, that the operator's performance is inadequate, inappropriate, or endangers the Excavator, the operator, other workers, or other properties, the DLNR may request the USFWS to remove the operator from the Excavator and the USFWS shall immediately comply with the removal request.
- d. Whenever the Excavator is used by the USFWS, the USFWS shall be responsible for all expenses to operate and repair the Excavator including, but not limited to, expenses for transportation, daily maintenance, operator wages, fuel, lubrication, and hydraulic fluids.

### 3. Maintenance and Repair

- a. The USFWS shall maintain the Excavator in good working order and condition, subject to normal wear and tear, and shall be responsible to repair the Excavator whenever necessary.
- b. The USFWS shall obtain written approval from the DLNR prior to commencing any alteration to the Excavator. The USFWS shall submit to the DLNR all information the DLNR may request to enable the DLNR to evaluate the alteration.
- c. The DLNR will provide the USFWS with an operator's manual as provided by the equipment manufacturer. The USFWS shall perform the necessary routine and preventative field maintenance to the Excavator as specified in the subject operator's manual.
- d. Pacific Machinery will service the Excavator every 250 hours of equipment operation. The USFWS shall permit Pacific Machinery to service the Excavator pursuant to Contract No. F84051.

- e. The USFWS shall permit the DLNR, at any reasonable time, access to the Excavator to inspect the condition of the Excavator or to show the Excavator to potential lessors.
- f. During the term of this Agreement, if the Excavator or a portion of the Excavator should be damaged or destroyed by any party, person, or entity and by any cause or casualty such that constructive total loss makes use of the Excavator commercially impracticable the USFWS shall notify the DLNR in writing within five (5) days of the discovery. The DLNR may elect to terminate this Agreement, repair or restore the damage or destruction, require the USFWS repair or restore the damage or destruction, or require the USFWS replace the Excavator. The DLNR shall notify the USFWS of its election in writing. If the DLNR elects to require the USFWS repair or restore the damage or destruction, the USFWS shall repair or restore the damage or destruction to the Excavator within 30 days of the DLNR's notice. If the DLNR elects to have the USFWS replace the Excavator, the USFWS shall replace the Excavator with an Excavator of equal kind and quality within one hundred eighty (180) days of the DLNR's notice. The DLNR shall not pay for, nor be responsible to find the USFWS an alternative Excavator, substitute the Excavator, pay for any replacement Excavator and/or pay for any loss to the USFWS or others for use of the Excavator.

#### 4. Compliance with Laws

- a. The USFWS shall comply with the provisions stated in Sections 1-18.1, et. Seq., Revised Ordinances of Honolulu 1990, Sexual Harassment Policy for Employer Having a Contract with the DLNR, as may be revised from time to time, which Ordinance is incorporated into this Agreement by reference and made a part of it. A copy of the current ordinance is marked as Exhibit A, which is attached to this Agreement and made a part of it.
- b. The USFWS shall comply with all Federal, State, and City ordinances, laws, rules, and regulations and any amendments thereto.

#### 5. Hazardous Materials

- a. The USFWS shall comply, at the USFWS's sole cost and expense, with all applicable "Hazardous Materials Law" (as such quoted term is defined herein below) affecting the premises, or any part thereof, upon which the Excavator is utilized. The USFWS shall not cause or permit, any "Hazardous Material" (as such quoted term is defined herein below) to be brought upon, kept, generated, stored, handled, manufactured, treated, used or disposed of in, about or around the premises upon which the Excavator is utilized by any USFWS employee without prior written approval of the DLNR. Any Hazardous Material permitted on the premises upon which the Excavator is utilized which has been approved by the DLNR as provided in the immediately preceding sentence, and all containers therefore, shall be used, kept, stored, handled, and disposed of in a manner that fully complies with all federal, State of Hawaii, and City and County of Honolulu laws, ordinances, rules, regulations and guidelines, and any amendments thereto, applicable to the Hazardous Material. The USFWS shall not discharge, dispose of release, leak or emit or permit to be discharged, disposed of, released, leaked or emitted, any material in, about, or around the premises upon which the Excavator will be used, or into the atmosphere, ground, storm drain, water drain, sewer system, or any body of water, if that material (as reasonably determined by the DLNR and/or any government authority) does or may pollute or contaminate the same, or may adversely affect (a) the health, welfare,

or safety of persons, whether located in the premises upon which the Excavator is utilized, or (b) the condition, use, or enjoyment of the premises upon which the Excavator is utilized or any other real or personal property.

1. The USFWS shall immediately notify the DLNR in writing of (a) any and all enforcement, cleanup, removal, mitigation or other governmental or regulatory actions instituted, contemplated or threatened pursuant to any Hazardous Materials Laws affecting the premises upon which the Excavator is utilized or any portion thereof, (b) all claims made or threatened by any third party against the USFWS or the DLNR relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Material, and (c) the USFWS's discovery of any occurrence or condition on or related to the USFWS or the DLNR to any liability or responsibility for cleanup, removal or mitigation action under any Hazardous Materials Laws.
2. If the USFWS breaches any of its obligations stated in this Section or if the presence of any Hazardous Material in, about, or around the premises upon which the Excavator was utilized caused or permitted by the USFWS results in any contamination of the premises upon which the Excavator was utilized or if any contamination of the premises upon which the Excavator was utilized or other properties by Hazardous Material otherwise occurs for which the USFWS is liable to the DLNR for damages resulting therefrom, then the USFWS shall indemnify, defend and hold harmless the DLNR and the DLNR's administrator, officers, directors, agents, attorneys, departments divisions, employees, representative, subrogates and assigns, from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses which arise during or after the term as a result of such contamination. This indemnification of the DLNR and DLNR's administrators, officers, directors, agents, attorneys, departments divisions, employees, representatives, subrogates and assigns by the USFWS includes all reasonable costs incurred in connection with any investigation of site conditions, or any cleanup, remedial, removal or restoration work, or any permit, license or approval which may now or hereafter be required by the Federal Government, State of Hawaii, and/or City and County of Honolulu, including, without limiting the generality of the foregoing, any department, agency or political subdivisions thereof, because of Hazardous Material present in or about or the oil or water within the premises upon which the Excavator was utilized. The USFWS's representations, warranties, covenants and indemnifications contained in this Section shall survive the Term.
3. As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by the United States Government, the State of Hawaii and/or the City and County of Honolulu, including any department, agency or political subdivision thereof. Without limitation to the generality of the foregoing sentence, the term "Hazardous Material" includes any material or substance that is (a) petroleum, (b) asbestos, (c) a flammable explosive, (d) radioactive material, (e) an organic substance known to cause cancer or reproductive toxicity, (f) any material or substance which is or may become regulated by applicable federal and/or State of Hawaii environmental laws including, without limitation, the Water Pollution Control Act (33 U.S.C. § 1321 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601 et

seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Clean Water Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substance Control Act (15 U.S.C. § 2601 et seq.), the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), Hawaii Revised Statutes ("H.R.S.") Chapter 3401E (Safe Drinking Water), H.R.S. Chapter 342B (Air Pollution), H.R.S. Chapter 342D (Water Pollution), H.R.S. Chapter 342J (Hazardous Waste), H.R.S. Chapter 342N (Used Oil Transport, Recycling and Disposal), H.R.S. Chapter 128D (Hawaii Environmental Response Law), or any similar Federal, State, or City and County of Honolulu laws, ordinances, rules, regulations or guidelines now existing or hereafter adopted, published and/or promulgated pursuant thereto (collectively, the "Hazardous Materials Law").

4. The DLNR shall have the right (but not the obligation) to join and participate in, as a party, any settlements, enforcement or remedial actions, legal proceedings or actions initiated in connection with any Hazardous Materials Laws, and to have reasonable attorneys' fees and costs incurred by the DLNR in connection therewith paid by the USFWS.

#### 6. Default

- a. The USFWS shall be in default of its obligations under this Agreement upon occurrence of any the following events (hereinafter called "events of default"):
  1. The USFWS's abandonment of the Excavator for a period of fifteen (15) consecutive days or more.
  2. Upon inspection of the Excavator by the DLNR, the DLNR finds that the Excavator is not in the same or substantially the same condition as it was when the DLNR originally had possession of the Excavator, subject to normal wear and tear.
  3. The USFWS's breach of any covenant, warranty, promise or representation herein contained and the continuance of such breach for a period of fifteen (15) days after written notice to the USFWS.

#### 7. Remedies

- a. Upon occurrence of any event of default, the DLNR may exercise any of the following remedies:
  1. The DLNR may elect to terminate this Agreement, but only by specific written notice of its election to the USFWS, and may terminate the rights of the USFWS to this Agreement and use of the Excavator and the DLNR may recover possession of the Excavator.
  2. The DLNR may, but shall not be obligated to cure any event of default and to charge the USFWS for the cost of effecting such cure.
- b. Upon the DLNR exercising any of its above-listed remedies, the USFWS agrees to the following:



1. If the DLNR elects to recover possession of the Excavator, the USFWS shall return the Excavator to the DLNR by transporting the Excavator to K & M Service's yard within five (5) days of the DLNR's election.
2. If the DLNR terminates this Agreement, then in addition to any other remedy available to the DLNR, the DLNR may recover from the USFWS (1) all damage sustained by the DLNR as a result of the USFWS's default, and/or (2) the costs of recovering possession of the Excavator and the reasonable attorney's fees and costs incurred by the DLNR.
3. The remedies available to the DLNR are cumulative and not exclusive, and the exercise of any remedy by the DLNR shall not preclude its exercise of any other available remedies.
4. The DLNR shall be entitled to recover from the USFWS all costs incurred by the DLNR in enforcing any provision of this Agreement, that the USFWS is required to comply with, including but not limited to reasonable attorney's fees and costs.

8. Termination

Either party may terminate this Agreement before the expiration of the term provided in paragraph 1 by providing written notice to the other party at least 60 days prior to the date of termination. The USFWS shall, prior to the date of the termination or expiration of the term of this Agreement, transport the Excavator to K & M Service yard.

9. Release/Indemnity

- a. The USFWS hereby releases the DLNR and the DLNR shall not be liable for any loss or damage from any cause whatsoever to any property or person arising out of, including but not limited to, the operation and transportation of the Excavator. The USFWS also releases the DLNR and the DLNR shall not be liable for injury or death to any Federal employee or any other person arising out of the operation and transportation of the Excavator, unless such injury or death is caused by the gross negligence or willful conduct of the DLNR.
- b. The USFWS and/or the Federal government, in the manner and to the extent provided by the Federal Tort Claims Act, as amended (28 U.S.C. 1346, 2671-2680), shall indemnify, defend, and/or hold the DLNR harmless from all claims for damage or loss of property, personal injury or death caused by the negligent or wrongful acts or omissions of any employee of the Federal government in the performance of this Agreement and for all claims for damage or loss of property, personal injury or death arising out of any and all subcontracts made between the USFWS and any other agency and/or organization pursuant to this Agreement; provided, that in the event that the Federal government has to pay for any loss, such payment shall not entail expenditures which exceed appropriations available at the time of the loss; provided further, that nothing herein shall be interpreted as implying that the United States Congress will, at any later date, appropriate funds sufficient to meet any deficiencies.
- c. The USFWS assumes all risks of loss or damage to the Excavator while in its care, custody, and control.

- d. General Insurance Requirements. The United States is self-insured. As such, the USFWS is self-insured as to the general insurance requirements of the DLNR.

10. Miscellaneous

- a. The parties agree that notification will be provided to each other party in writing for any requests for amendment to the Agreement. The provisions of this Agreement may be amended only by each party executing a subsequent written Agreement which states the amendment.
- b. Unless otherwise specifically stated, any notice required or permitted by the provisions of this Agreement to be given by a party to any other party, shall be written and shall be either personally delivered or mailed postage prepaid by certified mail, return receipt requested, to each party at the address and to the person designated by each party, stated below. No other method of notification shall be effective.

**DLNR's Project Officer shall be:**

David G. Smith  
DLNR – Division of Forestry and Wildlife  
2135 Makiki Heights Drive  
Honolulu, Hawaii 96822

Phone: 808-973-9786

**USFWS's Project Officer shall be:**

Sylvia R. Pelizza, Refuge Manager  
Oahu National Wildlife Refuge Complex  
66-590 Kamehameha Highway, Room 2C  
Haleiwa, Hawaii 96712

Phone: 808-637-6330 ext. 26

- c. Neither the entire agreement which is stated in this instrument nor any interest in it may be assigned, transferred, sublet, or encumbered by any party for any purpose without the prior written consent of each other party.
- d. The USFWS shall obtain the written consent of the DLNR prior to entering into any agreement with any person, agency, organization or entity other than the DLNR, when the performance of such contracts require the utilization of the DLNR personnel, equipment, i.e. Excavator, or supplies provided for under this Agreement. For any such agreement between the USFWS and other person, agency, organization, or entity, the USFWS shall 1) submit the agreement to the DLNR for its approval, 2) ensure that the agreement contains substantially similar provisions and protections favorable to the DLNR, and 3) forward a copy of the agreement to the DLNR following execution of the agreement by all parties.
- e. The provisions of this instrument shall be interpreted in accordance with the law of the State of Hawaii as that law is constructed and amended from time to time.
- f. Each party warrants to each other party that the individuals executing this Agreement on behalf of the respective parties are authorized to do so.

- g. Upon execution by each party, this instrument shall become binding and enforceable according to its provisions. The rights and obligations of each party named in this instrument shall bind and inure to the benefit of each party, respectively, and the respective heirs, personal representatives, successors, and assigns of each party.
- h. This Agreement together with the exhibits and those documents specifically incorporated herein by reference, represents the complete and fully integrated agreement and understanding between the parties, both oral and in writing, and terminates, cancels and supersedes all prior or contemporaneous agreements, understandings, negotiations, discussions or communications, whether oral or written. There are no representations, promises, agreements, understandings, warranties, or undertakings relating to this Agreement, written or oral, expressed or implied, that are not expressed in writing in this Agreement and its attachments, if any, or those documents specifically incorporated herein by reference.
- i. This Agreement may be executed by the parties in counterparts. The counterparts executed by the parties named in this instrument and properly acknowledged, if necessary, taken together, shall constitute a single instrument.
- j. If any dates stated in this instrument fall on a Saturday, Sunday, or legal holiday, such date shall be the next following business day.
- k. Certain terms where they initially are used in this Agreement are set off by quotation marks enclosed in parentheses and are subsequently capitalized. Those designated terms shall have the same meaning throughout this Agreement, unless otherwise specifically stated or clearly inappropriate in context.
- l. If any party is prevented from performing its obligations stated in the Agreement by any cause not within the reasonable control of that party, including but not limited to, fire, an act of God, public enemy, or war, an act or failure to act of a government entity (except on the part of the DLNR or Federal Government), unavailability of materials, or actions by or against labor unions, it shall not be in default of its obligations stated in this Agreement by notifying the party to which it is obligated within ten (10) days following the event. If the notified party agrees that the event was the cause of the delay, the time to perform the obligations stated in this Agreement shall be extended by the number of days of delay caused by the event. If the required notice is not given by the delayed party, no time extension shall be granted.
- m. In this Agreement, the use of any gender shall include all genders and the use of any number reference to nouns and pronouns shall include the singular or plural, as context indicates.
- n. If required by the provisions of this Agreement or requested by any party, a memorandum of this Agreement shall be executed by the parties, the signatures properly acknowledged by a Notary Public, and recorded in the Bureau of Conveyances, State of Hawaii.
- o. Each party named in this Agreement acknowledges and agrees that (i) each party is of equal bargaining strength; (ii) each party has actively participated in the negotiation and preparation of this agreement; (iii) each party has consulted with its respective legal

counsel and other professional advisors as each party has deemed appropriate; (iv) each party and the party's legal counsel and advisors have been given the opportunity to review this Agreement; and that (v) no provision stated in this instrument shall be construed against any party as its drafter.

- p. The provisions stated in this Agreement shall not bind any party until each party has executed it. The mere delivery of this Agreement is not an offer.
- q. The titles of provisions stated in this Agreement are included only for the convenience of the parties. They shall not be considered in the construction and interpretation of the provisions stated in this Agreement.
- r. Each party named in this instrument agrees to execute the instruments and to diligently undertake the acts necessary to consummate the transaction contemplated by this Agreement. Each party shall use its best efforts to consummate the transaction contemplated by this Agreement.
- s. If any provision stated in this Agreement subsequently is determined to be invalid, illegal, or unenforceable, that determination shall not affect the validity, legality, or enforceability of the remaining provisions stated in this Agreement unless that is made impossible by the absence of the omitted provisions.
- t. Any representation and warranty stated in this instrument made by a party shall survive the termination of the Agreement stated in this instrument, unless otherwise specifically stated.

IN WITNESS WHEREOF, the undersigned have executed these presents as of the day and year first written above.


BY \_\_\_\_\_  
Chairperson, Board of Land and Natural Resources

Date \_\_\_\_\_

BY \_\_\_\_\_  
Refuge Manager, USFWS Oahu Refuge Complex

Date \_\_\_\_\_

APPROVED AS TO FORM:

BY  \_\_\_\_\_  
Deputy Attorney General  
For Department of Land and Natural Resources

Date 11/13/06